

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HELEN HARRIS

Claimant

VS.

U.S.D. 475

Respondent

AND

KANSAS ASSOCIATION OF SCHOOL BOARDS

Insurance Carrier

)
)
)
)
)
)
)
)
)
)

Docket No. 237,944

ORDER

The claimant appealed the November 18, 1999 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for an August 11, 1998 accident, which allegedly resulted in a low back injury. At the time of the alleged accident, the claimant felt and heard a snap in her back when she bent over to pick up a pencil at the end of a paid break. After finding that claimant's injury resulted from a personal risk and did not arise out of her employment, the Judge denied the request for benefits.

The claimant contends Judge Benedict erred and argues that her accident arose out of her employment as a janitor.

Conversely, the respondent argues that the Judge correctly concluded that claimant's accident did not arise out of her employment because the accident occurred either as the result of a personal risk or as the result of day-to-day living activities. Further, the respondent contends that claimant failed to prove that the present need for medical treatment was related to the August 1998 incident.

The only issues before the Appeals Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of her employment with the respondent?

2. If so, is claimant's present need for medical treatment related to the August 1998 accident?

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Ms. Harris was employed as a janitor at U.S.D. 475. On August 11, 1998, Ms. Harris' back popped when she reached down to pick up a pencil. The incident occurred as Ms. Harris' paid afternoon break was ending. Ms. Harris had been using the pencil during her break to list cleaning supplies that she would need the next day in her work.
2. Ms. Harris' back popped in the same area that she had injured at work in 1996.
3. Sometime after the August 1998 accident, Ms. Harris traveled by car to Dallas, Texas. Because of the increased symptoms that she experienced on that trip, she believes that the travel permanently worsened her back. At the November 1999 preliminary hearing, Ms. Harris testified:

Q. (Mr. Cooper) Okay. Do you feel like that trip to Dallas made your condition permanently worse?

A. (Ms. Harris) Yes.

Q. In what way?

A. It -- it's where -- really my back hurt all the time, all the time, so the trip here -- if I had to sit down long enough, sitting in the lobby a while ago, just sitting hurts my back, and my leg, and I have real bad muscle spasms sometimes from it. Sometimes I just -- when my leg -- back just burns on the inside, just pain.

Q. How long has your back been that way?

A. Ever since I had the accident at the school.

Q. You're talking about 1996?

A. Yes.

Based upon that testimony the Appeals Board finds that Ms. Harris' back has remained symptomatic since her earlier work-related accident in 1996 and that the trip to Dallas, Texas, following the August 1998 accident further aggravated her symptoms.

4. In the spring of 1999, Ms. Harris slipped and fell after leaving a filling station where she worked. That incident also caused her increased back pain.

5. At this juncture of the proceeding, the record does not appear to contain any expert medical opinion that addresses the question of whether Ms. Harris sustained any injury or aggravation in the August 1998 incident that warrants the medical treatment now requested.

CONCLUSIONS OF LAW

1. For reasons set forth below, the preliminary hearing finding that Ms. Harris' August 11, 1998 incident did not arise out of her employment should be set aside. But the denial of medical benefits should be affirmed.

2. The school district argues that Ms. Harris' claim should be denied in its entirety because the August 1998 incident did not arise out of her employment. In support of that argument, the school district cites K.S.A. 1998 Supp. 44-508(e), which provides:

"Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

3. On previous occasions, the Appeals Board has stated that K.S.A. 1998 Supp. 44-508(e) is a codification of the Boeckmann¹ decision where the Kansas Supreme Court held that injuries caused by "everyday bodily motions" which "gradually and imperceptibly eroded the physical fibers" are not compensable where it is clear any movement on or off the job would cause the injury regardless of the worker's activities. Ms. Harris' accident was a sudden traumatic event and, therefore, her accident is distinguishable from that contemplated and precluded by K.S.A. 1998 Supp. 44-508(e). The Appeals Board interprets the language used in K.S.A. 1998 Supp. 44-508(e) that excludes injuries related to the natural aging process and the activities of day-to-day living as the legislative directive to award compensation only for those accidents and injuries that are directly and causally related to work activities.

4. At this juncture of the proceeding the Appeals Board is not finding that Ms. Harris permanently injured or permanently aggravated her back in the August 11, 1998 incident because the evidence presented to date establishes nothing more than a temporary flare-up of symptoms. But the Appeals Board does conclude that Ms. Harris' bending down to pick

¹ Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

up her pencil was an act that arose out of her employment because it was directly related to her job as a janitor. The fact that the incident occurred during a paid break does not change that conclusion as the break was incidental to Ms. Harris' employment.

5. The school district's arguments that the activity was either a personal risk or an everyday activity are rejected. The Appeals Board rejects the analysis that the school district seems to suggest. The school district suggests that personal risks and day-to-day activities are determined by examining the anatomical movement that the worker was performing at the time of the accident and if such movement or physical activity is also performed outside of work then it either constitutes a personal risk or day-to-day activity. That analysis would exclude most, if not all, claims that did not involve an identifiable external force. When determining whether an accident arises out of employment, the proper analysis is whether there is a causal connection or direct relationship between the activity that is being performed at the time of the accident and the worker's job. And in this instance, that relationship exists.

6. The Appeals Board concludes that Ms. Harris has failed to prove that the August 1998 incident caused the need for the medical treatment that she now requests. Ms. Harris had experienced significant back symptoms on an ongoing basis since her 1996 work-related accident. Further, the evidence fails to prove that the August 1998 incident caused anything more than a temporary flare-up of symptoms. Therefore, Ms. Harris' request for medical benefits should be denied.

WHEREFORE, the Appeals Board modifies the November 18, 1999 preliminary hearing Order entered by Judge Benedict and holds that the August 11, 1998, incident arose out of Ms. Harris' employment. But the denial of medical benefits is affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Anton C. Andersen, Kansas City, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director